

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Melvin Anderson, Petitioner, v. B. Birkholz, Kyja Winger, and Michael Carvajal, Respondents.</p>	<p>Case No. 21-CV-1420 (SRN/TNL)</p> <p style="text-align: center;">ORDER</p>
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Melvin Anderson, Federal Prison Camp, P.O. Box 1000, Duluth, MN 55814, Pro Se.

Ana H. Voss and Chad A. Blumenfield, U.S. Attorney's Office, 300 S. 4th St., Suite 600, Minneapolis, MN 55415, for Respondents.

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on Petitioner Melvin Anderson's (1) application to proceed *in forma pauperis* ("IFP") on appeal [Doc. No. 12] and (2) Motion for Request for Certificate of Appealability [ECF No. 14 ("COA Motion")].

After review, this Court concludes that Anderson qualifies financially for IFP status. This Court also concludes that, although it continues to believe that Anderson's petition for a writ of habeas corpus was correctly dismissed, his appeal is not frivolous as the Supreme Court has defined that term. Accordingly, Anderson's IFP application is granted.

The COA Motion, on the other hand, is denied: Anderson does not need a COA to proceed with his appeal. Under 28 U.S.C. § 2253(c)(1), "[u]nless a circuit justice or

judge issues a [COA], an appeal may not be taken to the court of appeals from (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or (B) the final order in a proceeding under section 2255.” Anderson’s habeas petition does not fit into either of these categories: he is a federal prisoner, and his petition here was under 28 U.S.C. § 2241, not 28 U.S.C. § 2255. [See, e.g., ECF No. 1.] As a result, he can proceed with his appeal without a COA. *See, e.g., Winburn v. Nagy*, 956 F.3d 909, 912 (6th Cir. 2020); *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 177 (3d Cir. 2017); *Eldridge v. Berkebile*, 791 F.3d 1239, 1241 (10th Cir. 2015).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Petitioner Melvin Anderson’s application to proceed *in forma pauperis* on appeal [Doc. No. 12] is **GRANTED**.
2. Anderson’s Motion for Request for Certificate of Appealability [Doc. No. 14] is **DENIED**, because Anderson does not need a certificate of appealability to appeal this Court’s denial of Anderson’s petition.

Dated: October 4, 2021

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge